

**SEPARATE STATEMENT OF  
COMMISSIONER KATHLEEN Q. ABERNATHY**

*Re: Federal-State Joint Board on Universal Service, Recommended Decision*

This Recommended Decision addresses several critical issues regarding the distribution of universal service support to carriers serving rural areas. These issues concern the designation and funding of eligible telecommunications carriers (ETCs) in rural areas facing competition, and they go to the heart of the Commission's administration of the federal high-cost support mechanisms. As Chair of the Joint Board, I have made this undertaking our highest priority, and I am grateful that my colleagues have responded with extremely thoughtful recommendations. While our work continues in some important respects, I am proud of the progress we have made, and I commend my colleagues and the outstanding staff for their diligent and insightful participation in this proceeding. We were able to reach consensus on several critical issues and we narrowed our differences on others. Where we have been forced to disagree, our divergences have been principled and respectful. It has been a privilege for me to serve with such a committed group of public servants.

A major impetus for initiating this proceeding was widespread uncertainty regarding the appropriate standards for determining whether the designation of a competitive ETC serves the public interest. We have responded to requests for guidance from state commissions and carriers by setting forth a comprehensive set of recommended minimum standards for the designation of ETCs. As I explained in a recent FCC designation decision, I believe that an ETC must be prepared to serve all customers upon reasonable request, and it must offer high-quality services at affordable rates throughout the designated service area.<sup>1</sup> State commissions, acting under section 214(e)(2), and the FCC, acting under section 214(e)(6), plainly should be able to impose conditions designed to ensure that all ETCs are appropriately qualified. Perhaps most importantly, the certifying authority should make sure that a prospective ETC has the ability and commitment to build out facilities as necessary to serve the entire designated area. I am pleased that my federal and state colleagues have unanimously agreed on this principle as well as other core standards that should make the designation process more rigorous, and also more uniform and predictable. I hope that state commissions and the FCC heed this guidance in upcoming designation proceedings.

The Commission's other principal charge to the Joint Board was to consider a variety of means to ensure the sustainability of high-cost funding in rural areas as

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<sup>1</sup> Separate Statement of Commissioner Kathleen Q. Abernathy, *Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, Memorandum Opinion and Order, CC Docket No. 96-45, FCC 03-338 (rel. Jan. 22, 2004).

competition grows. A majority of the Joint Board believe that the most promising proposals call for some kind of modification to the current system that funds all connections from all carriers (although, as discussed below, I believe that we must also continue to explore possible changes to the basis for calculating support). I do not know at this stage whether I will ultimately vote to adopt a primary-line restriction of the sort discussed in this Recommended Decision, but it seems clear that the universal service fund can no longer subsidize an unlimited number of connections provided by an unlimited number of carriers. Nor do I believe that the Communications Act contemplates such a result. Section 254 at bottom requires a “lifeline” connection to the PSTN — in other words, reasonably priced access to the network that provides the core “supported services” that make up universal service.<sup>2</sup> That goal will be fulfilled as long as the Commission continues to support a primary connection for every consumer living in high-cost rural areas.

Critics of primary-line proposals have raised legitimate concerns about administrability and the impact on investment in rural communities. In response, the Joint Board’s recommendation is contingent on the Commission’s ability to develop a workable primary-line rule. Moreover, my colleagues and I have worked hard to develop a variety of proposals that should mitigate the impact of any support restriction on rural consumers and carriers, and we have expressly recommended seeking further comment on this issue. Contrary to what some parties may have assumed, the Joint Board has never contemplated a sudden withdrawal of support for existing second lines. Rather, we have suggested further consideration of two straightforward propositions. First, a competitive carrier should receive support only to the extent that it “wins” the customer. And second, an incumbent ETC might risk losing the support associated with a customer when it no longer serves that customer. In rural areas that lack multiple ETCs — which is the vast majority of them — the primary-line proposals outlined in this Recommended Decision would bring about *no change* in the flow of high-cost funding. And even where competition has eroded rural carriers’ customer base to some extent, the Joint Board has recognized the need to proceed cautiously before imposing any restrictions on the amount of available support. Given these efforts to protect consumers in rural areas, I believe it would be short-sighted to terminate our consideration of these proposals at this early stage.

Finally, I am pleased that we will continue to examine proposals to modify the basis of support for ETCs. Notably, every member of the Joint Board has recognized that “funding a competitive ETC based on the incumbent LEC’s embedded costs may not be the most economically rational method for calculating support.”<sup>3</sup> While we agree on the problem, the solution has been elusive. If the Commission wanted to fund competitors based on their own embedded costs, the record does not tell us how to calculate such costs, given that competitive carriers are not subject to a regulatory accounting regime. More troublingly, several parties have suggested that wireless carriers’ per-line support would be *higher* than incumbents’ if calculated based on their own network costs, given

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<sup>2</sup> Support for the networks that provide the core services also enables consumers in rural areas to receive all of the other services — including advanced services — available over those networks.

<sup>3</sup> Recommended Decision, para. 96.

the new entrants' lower penetration rates — and obviously that would frustrate our goal of *restraining* growth in high-cost funding. Alternatively, if we were to pursue a forward-looking cost methodology, similar questions remain about how to implement such an approach at this time. And several parties have argued convincingly that, instead of focusing narrowly on the basis of support for competitive carriers, the Joint Board should comprehensively review the basis of support for *all* ETCs — as the Commission pledged in its *Rural Task Force Order* to do by 2006. The Joint Board has accordingly recommended that the Commission refer this broader issue for its consideration, and I hope that the FCC takes that step in the very near future.



